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TO RUEHC/SECSTATE WASHDC 0347
INFO RUEHBO/AMEMBASSY BOGOTA 8132
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SENSITIVE
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SUBJECT: GOE PAYS U.S. ELECTRICITY FIRM MACHALA POWER, RESOLVES
INVESTMENT DISPUTE

REFTEL: QUITO 22

¶1. (SBU) Summary: The GOE paid \$60 million in March and April 2009 in settlement of an investment dispute with U.S. electricity company Machala Power, following an agreement between the two parties in December 2008. Machala Power has withdrawn its international arbitration claim and continues to operate its electricity plant, but does not plan substantial additional investments in Ecuador at this time. End Summary.

¶2. (U) In December 2008, the two parties signed an agreement that the GOE would pay arrears owed to Machala Power by state-owned electricity companies, and Machala Power would drop its arbitration case (reftel). One of Noble Energy's two subsidiaries in Ecuador, Machala Power generates electricity using natural gas produced by its sister company EDC. The company filed for international arbitration in March 2005, but continued to seek a negotiated settlement with the GOE.

¶3. (SBU) The GOE did not immediately make the payment as established in the December agreement because of its growing fiscal problems. In early 2009, the GOE asked Machala Power if would still accept the agreement if the GOE paid on a short installment plan, and Machala Power agreed. During March and April 2009, the GOE paid Machala Power \$60 million in five \$12 million installments. This amount reflects the arrears accumulated through August 26, 2008, as agreed by Machala Power and the appropriate GOE agencies.

¶4. (SBU) The GOE still owes Machala Power approximately \$20 million for arrears since August 2008, but Machala Power withdrew its arbitration case on April 22, 2009. EDC and Machala Power General Manager John Tomich acknowledged that withdrawing the arbitration case could reduce leverage to obtain the remaining payment, but said that Machala Power was complying with the terms of its December agreement. The GOE has not publicly acknowledged that it has made the payments or that Machala Power is withdrawing its arbitration. Tomich believes the GOE is hesitant to announce the payments at a time when the government is curtailing expenditures to conserve scarce reserves because of declining revenue.

¶5. (SBU) Tomich met with the Ambassador April 30 to report the resolution of the dispute and express his thanks for Embassy support. He said that his company was pleased with the developments and the government's efforts to resolve the investment dispute. However, he was concerned that the GOE may have unrealistic expectations for EDC's natural gas development plans. He claimed that the GOE was signing an agreement with a company that was to install a gas liquefaction plant next to Machala Power's electricity plant, to liquefy EDC's natural gas for shipping to the city of Cuenca. However, Tomich cautioned that the proven reserves of the EDC field were only sufficient to run the power plant and not enough for additional projects. Although there was the possibility that

additional gas could be available with further investment, Tomich commented that Ecuador's current investment climate and low energy prices were not conducive to the substantial lump-sum additional investment necessary for expansion.

16. (SBU) Comment: Tomich gave a somewhat different message than a year ago, when Noble Energy was exploring expanding natural gas production and possibly providing additional gas to another U.S. electricity company that would relocate to Machala. That plan was contingent upon EDC obtaining certain approvals, but the GOE rejected EDC's development plan. Since then, EDC has presented two new development plans, substantially scaling back its commitment each time. Although Machala Power and EDC remain in Ecuador, another clash may be brewing with the GOE over differing expectations. End Comment.

HODGES